IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 4943 of 2007(L)

CMP.4290/2005 of J.M.F.C.,VADAKARA
CRIME NO. 663/05 OF VADAKARA POLICE STATION

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PETITIONER:

T.MUHAMMED FIROZ, AGED 49 YEARS,
S/O.AHAMMED, THOTTATHIL HOUSE, CHIRAKKARA,
THALASSERY.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. S.H.O., VADAKARA POLICE STATION,
VADAKARA.

2. SUB INSPECTOR OF POLICE,
HIGHWAY POLICE, KOZHIKODE.

3. ASSISTANT EXCISE COMMISSIONER,
KOZHIKODE.

BY GOV. PLEADER SRI. S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO. 4943 2007-L

Dated this the 26th day of February, 2007

JUDGMENT

The petitioner is aggrieved by Ext.P2 order passed under Sec.451 of the Cr.P.C. by the learned Magistrate refusing to return the vehicle belonging to him and seized by the police in connection with an offence punishable under the provisions of the Kerala Abkari Act.

2. The learned Public Prosecutor, after taking instructions, submits that proceedings under Sec.67B of the Abkari Act were initiated against the petitioner and by order dated 27/9/06 passed by the Assistant Excise Commissioner, Kozhikode, the vehicle has been ordered to be confiscated. Against that, the petitioner, through his counsel, has preferred an appeal and the Additional Excise Commissioner, Trivandrum, by order dated 23/2/07 has already disposed of that appeal dismissing the same. In these circumstances, there is no merit or grace in the prayer made by the learned counsel for the petitioner in this writ petition that the vehicle may be released to the petitioner. The petitioner is

contumaciously guilty of suppressing the order of confiscation under Sec.67B of the Abkari Act and the further proceedings taken in pursuance of that order, points out the learned Public Prosecutor.

3. I am satisfied that an order of confiscation having already been passed, the petitioner cannot be heard to complain about the dismissal of the petition filed by him under Sec.451 of the Cr.P.C.

4. In the result, this writ petition is dismissed. I may hasten to observe that the petitioner's right to challenge the order passed under Sec.67B of the Abkari Act and the further orders thereon shall remain unfettered by the dismissal of this writ petition.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge